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IN THE

Supreme Court of the United States

October Term 1941

No. 1159

THE STATE OF WYOMING, *Petitioner,*
vs.
YELLOWSTONE PARK COMPANY, a corporation, *Respondent,*

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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Question Presented Would Seem to be Unsubstantial.

The Hayden-Cartwright Act of June 16, 1936, (49 Stat. 1521) upon which the petition here is based, has been amended by the Buck Act of October 9, 1940, (54 Stat. 1060) in such respects that, so far as the future administration of the law is concerned, the petition presents only a moot question.

The relevant part of the Hayden-Cartwright Act is quoted at top of page 18 of the petition here, and the relevant part of the Buck Act is quoted at the foot of the same page.

Petitioner's specifications of error I and II (page 10 of Petitioner's brief) insofar as administration of the Federal Act in future is concerned, are, of course, groundless.

No actual conflict between the decisions of the State Court and the United States Circuit Court of Appeals as suggested, specification of Error III.

By Specification of Error III (Brief, p. 11) petitioner claims that the decision of the Supreme Court of Wyoming, in the case State of Wyoming vs. Yellowstone Park Company, 121 Pac. (2d) 170, is in conflict with the decision of the United States Circuit Court of Appeals, Eighth Circuit, in the case State of Minnesota vs. Colonel H. J. Keeley, et al., decided March 30, 1942, unreported, copy of the opinion attached as an Appendix to this brief.

The State taxing Acts involved in the two decisions are so different in their provisions as to exclude the possibility of drawing a comparison between the applicability of the Federal Act to those two State statutes.

The United States Circuit Court of Appeals has held the Minnesota gasoline tax act to be within the consent of the Hayden-Cartwright Act to the States to tax gasoline sold within a Federal military reservation; the Supreme Court of Wyoming has held that so much of the Wyoming law as levies a tax upon the importation and the use of gasoline, (as distinguished from a sale) within the boundaries of Yellowstone National Park is not within the consent of the Federal Act.

These two holdings are not necessarily in conflict.

We find that in the Minnesota case it was admitted that the action was

> "to recover from said defendants the amount of the tax levied and imposed x x x upon all motor fuel sold by and through the Fort Snelling Post Exchange x x x an dwhich taxes said defendants have collected on that account," etc. (See opinion U. S. District Court, State of Minnesota vs. Ristine, 36 Fed Supp. page 4).

and the decision of the United States Circuit Court of Appeals holds such taxes within the consent of the Act of Congress.

The Wyoming court was dealing with gasoline imported into Yellowstone National Park and not sold, but used by the importer wholly within the boundaries of the National Park. And the latter court held that the Hayden-Cartwright Act was not broad enough to amount to the consent of Congress to relinquish the exclusive Federal jurisdiction within the National Park, in favor of that part of the Wyoming Act taxing gasoline "produced, refined, manufactured, blended, x x x compounded x x x distributed x x x imported into x x x or used" within the boundaries of Yellowstone National Park. (See Wyoming Act, page 19 petitioner's brief).

It is true the reasoning advanced by the two courts in reaching their respective decisions is in conflict.

To me it seems impossible to conform the Hayden-Cartwright Act to the 48 different gasoline taxing laws of the 48 different States, nor do I think we may look further into the record of proceedings of

the Congress than to use that record as a guide in interpreting the language used in the Act, as distinguished from speculation as to what the Congress wanted to accomplish by a particular legislative enactment.

Petioner's remaining specifications of error (IV and V brief p. 11) do not seem to raise such questions as this Court recognizes as grounds for issuance of the writ.

I respectfully contend that the petition here should be denied.

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